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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,082	09/12/2003	Kenneth J. Taylor	19898/21-CON	9804

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EXAMINER	
GORTAYO, DANGELINO N	
ART UNIT	**PAPER NUMBER**
2168	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/662,082	TAYLOR, KENNETH J.	
	Examiner	Art Unit	
	Dangelino N. Gortayo	2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 November 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. In the amendment filed on 11/21/2007, claim 7 has been amended. Claims 8-11 have been added. The currently pending claim considered below is Claim 7-11.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 7 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,658,589 Although the conflicting claims are not identical, they are not patentably distinct from each other because: **Claim 1 of US Patent 6,658,589 B1 contains every element of claim 7**

of the instant application and as such anticipates claim 7 of the instant application.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

This is an obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bamford et al. ("Bamford" US Patent 5,449,367, issued 3/12/1996) in view of Crowe et al. (US Patent 5,970,488)

As per claim 7, Bamford teaches "In a computer system having a plurality of nodes, each node having access to a shared common database and also having local storage," (see Abstract, Figure 3, wherein client nodes composed of memory and a processor access a shared database)

"providing a local redo log in local storage for said node, said node including information regarding data in said shared common database" (column 5 lines 55-64, column 6 lines 42-53, wherein each client is provided with a log)

selecting at least one of said nodes to perform an operation (column 12 line 10 – column 14 line 9, wherein a client is chosen and submits database modification requests)

"obtaining information regarding a directory location of said local redo log for said at least one node;" (column 10 lines 23-59 and column 14 lines 3-9, wherein a log is located for the client)

"setting said local redo log to be read/write accessible by said selected at least one node;" (column 6 lines 3-14 and lines 31-39, wherein the log can be read and written by clients)

Bamford does not teach selecting a node to perform backup operations and backing up data in said node and said shared common database by accessing data in said node and said shared common database and also in said local redo log to provide backup data.

Crowe teaches selecting a node to perform backup operations and backing up data in said node and said shared common database by accessing data in said node

and said shared common database and also in said local redo log to provide backup data. (column 2 lines 19-28, column 10 line 57 – column 11 line 27, column 11 lines 53-65, column 12 lines 52-62, wherein a copy of the database is stored in each machine and an updated table list is stored with an updated record list to track and access copies of the database)

It would have been obvious at the time of the invention for one of ordinary skill in the art to combine Bamford's method of providing a log system to clients in a system that tracks information in a central database with Crowe's method of storing a copy of a database in a plurality of nodes for backup purposes. This gives the user the advantage of providing backup operations in Bamford's method in addition to the recovery process to respond to failures in the system. The motivation for doing so would be speed up an update process and reduce the cost of maintaining copies of data in a database system (column 2 lines 1-16).

As per claim 8, Bamford teaches "said archived redo logs in local files on each of said nodes are set to be read and write accessible through mounting with a network file system (NFS), using the same name each of said nodes." (column 33-67)

As per claim 9, Bamford teaches "said archived redo logs are created with names which allow a backup or recover utility to identify which node an archived redo log belongs." (column 10 lines 14-28)

As per claim 10, Crowe teaches "before said step of running a backup utility which backs up said common data and said archived redo logs for said computer system, shutting down access to said common data." (column 9 lines 27-43)

As per claim 11, Crowe teaches "said backup utility allows for a user- supplied scripts for shutting down access to said common data." (column 9 lines 27-43)

Response to Arguments

5. Applicant's arguments with respect to claim 7 have been considered but are moot in view of the new ground(s) of rejection. The updated table list and updated record list disclosed by Crowe are used to record changes to database, with each node serving as backup and each node having the ability to serve as its own master when performing backup functions (column 2 lines 26-28). A copy of the database is stored on every machine (column 2 lines 53-55, column 7 lines 16-26, column 8 lines 13-39) and updates the local copy utilizing the updated table list and updated record list (column 10 line 57 – column 11 line 27, column 11 lines 53-65, column 12 lines 52-62), teaching a method of selecting a node to perform backup operations and backing up data in said node and said shared common database by accessing data in said node and said shared common database and also in said local redo log to provide backup data. Each node can read the other nodes in the system for a copy of the database stored in the nodes. The backup feature utilized by Crowe is incorporated by reference into the prior art of Bamford to disclose all limitations of the claim, including the limitation "providing backup operation", disclosed by Crowe, which the applicant believed was missing from Bamford according to the arguments filed 4/25/2007. Therefore, the prior art of Bamford in view of Crowe teaches all limitations of the claim .

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dangelino N. Gortayo whose telephone number is (571)272-7204. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim T. Vo can be reached on (571)272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dangelino N. Gortayo
Examiner

Tim T. Vo
SPE

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